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T.R.A. DOCKET ROOM

December 21, 2004

Honorable Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Docket 04-00380

**Re: In Re: BellSouth Telecommunications, Inc. Tariff to Introduce
Transit Traffic Service, Tariff No. 20041259**

Dear Chairman Miller:

The Petitioners filed their Petition to Intervene and Request to Suspend Tariff and to Conduct a Contested Case Proceeding on October 29, 2004. Upon subsequent review of the petition, it was determined that a line of text was omitted from Paragraph 2 of that document. Therefore, the Petitioners request that Paragraph 2 be deleted in its entirety and the following be substituted in its place and stead. Paragraph 2 should read as follows:

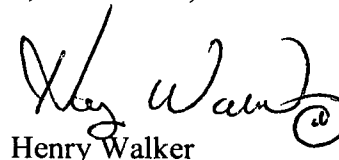
“Upon information and belief, the Petitioners submit that BellSouth has in effect a number of interconnection agreements which establish a BellSouth “transit” rate of \$.0025 per minute or less. In the tariff proposal to the TRA, BellSouth seeks to impose a transit fee of \$.006 per minute, a rate far in excess of the transit rate set forth in those interconnection agreements and in BellSouth’s SGAT on file at the TRA. BellSouth’s proposed rate is clearly unjust and unreasonable.”

A new page 1 and page 2 of the Petition to Intervene is enclosed with this correspondence.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/djc
Enclosure
Cc: Guy Hicks

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re:)	
)	
BellSouth Telecommunications, Inc.)	Docket No. 04-00380
Tariff to Introduce Transit Traffic Service,)	
Tariff No. 20041259)	

**PETITION TO INTERVENE AND REQUEST TO SUSPEND TARIFF AND TO
CONDUCT A CONTESTED CASE PROCEEDING**

The Petitioners¹ request that the Tennessee Regulatory Authority allow intervention in the above-captioned tariff filed by BellSouth Telecommunications, Inc. ("BellSouth"). The Petitioners also ask that the Authority suspend the tariff pending the outcome of a contested case proceeding. The proposed tariff, scheduled to become effective on November 5, 2004, sets a rate for BellSouth's handling of "transit" traffic i.e., telephone calls that originate with one carrier, transit BellSouth's network and are ultimately delivered to a third carrier for termination. Since it is impractical for every local telecommunications carrier to have a direct connection with every other local carrier, the use of an intermediate, "transit" carrier to take calls from an originating carrier and hand them off to the terminating carrier is a common practice in the industry. In fact, the offering of such "indirect" connections between carriers is expressly required by the Federal Telecommunications Act, 47 U.S.C. §251(a)(1), and such interconnection "transmission" services must be offered at TELRIC rates pursuant to 47 U.S.C. §252(d)(1).

Upon information and belief, the Petitioners submit that BellSouth has in effect a number of interconnection agreements which establish a BellSouth "transit" rate of \$.0025 per minute or less. In the tariff proposal to the TRA, BellSouth seeks to impose a transit fee of \$.006 per

¹ At this time, the Petitioners are AT&T Communications of the South Central States, LLC, MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., NuVox Communications, Inc., US LEC of Tennessee, Inc., XO Tennessee, Inc. Xspedius Communications, LLC and Southeastern Competitive Carriers Association

BEFORE THE TENNESSEE REGULATORY AUTHORITY
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In Re:)	
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minute, a rate far in excess of the transit rate set forth in those interconnection agreements and in BellSouth's SGAT on file at the TRA. BellSouth's proposed rate is clearly unjust and unreasonable.

Pursuant to T.C.A. §4-5-310(a), the Petitioners have a statutory right to intervene in this proceeding. As competitive local telephone carriers, the Petitioners must use BellSouth's transit services to interconnect with other local carriers. Absent an agreement with BellSouth, each Petitioner will presumably have to pay BellSouth the tariffed rate approved by the TRA. Even if a Petitioner has a current agreement which provides for a transit rate that is less than the proposed tariff, it seems likely that, once the current agreement expires, BellSouth will argue that any new agreement must incorporate the tariff rate for transit traffic. For these reasons, the Petitioners have a legal interest in the outcome of this proceeding and, therefore, a statutory right to intervene. Furthermore, granting these Petitions will not impair the interest of justice or the orderly and prompt conduct of these proceedings.

The proposed tariff substantially increases the transit rate found in current interconnection agreements and in the BellSouth SGAT. BellSouth has made no effort to demonstrate that the proposed increase is based on cost or otherwise consistent with the pricing standards set forth in §252(d)(1) of the Telecommunications Act. To the contrary, Petitioners believe, upon information and belief, that Bellsouth will contend that the proposed rate of \$.006 per minute is a "market" rate and that BellSouth has no legal obligation, to demonstrate that the rate is consistent with the requirements of the Act. On its face, the proposed increase cannot be consistent with that statutory standard. For example, if transit rates of \$.0025 per minute or less, as approved by the TRA, as contained in some Tennessee interconnection agreements, or that even lower rates have been found to comply with the pricing standards of §252(d)(1), then there

is a substantial likelihood that a "market" rate of \$.006 per minute fails to comply with those standards.

Pursuant to T.C.A. §65-5-201(c), the TRA may suspend the proposed tariff either upon a showing by a complaining party that there is a substantial likelihood that the tariff is illegal and will cause injury to the complaining party or "upon finding such suspension to be in the public interest." Under either standard, the TRA may suspend this proposed tariff pending the outcome of a contested case to determine whether BellSouth's proposed rate complies with the pricing standard set forth in §252(d)(1).

The importance of this proceeding cannot be overstated. The issue before the agency is a case of first impression for the TRA and, for the most part, a case of first impression in the BellSouth region. The North Carolina Commission has ruled that BellSouth is required by the federal Telecommunications Act and applicable state law to offer transit services but allowed the parties to negotiate the applicable rate.² (The Connecticut Commission has also ruled that the incumbent Bell carrier must provide transit service and ordered a substantial reduction in the transit rate of Southern New England Telephone Company.) Copies of both the North Carolina and Connecticut decisions are attached.

Finally, unlike most proposed tariffs which concern services offered to end users and are usually services which are also offered by other carriers, BellSouth's transit service is offered only to other carriers, not to end users, and is, for all practical purposes, a monopoly service. In Tennessee, BellSouth is the only local provider with ubiquitous local connections and, therefore, the only available "transit" carrier in most circumstances. In these circumstances, the TRA must

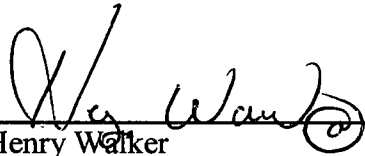
² To Petitioners' knowledge, no other state commission in the BellSouth region has issued a ruling on BellSouth's legal obligation to provide the transit function. The Georgia Public Service Commission recently concluded hearings in a docket addressing transit traffic. A decision is expected before January, 2005. See BellSouth Telecommunications, Inc.'s Petition For A Declaratory Ruling Regarding Transit Traffic, Docket No. 16772-U.

therefore be especially cautious to insure that the monopoly rate charged by BellSouth is just and reasonable, non-discriminatory, and will "permit competition in all telecommunications service markets," as the General Assembly has instructed. T.C.A. §65-4-123. Clearly this is a case where the public interest warrants suspension of the proposed tariff and a careful consideration of the policy issues at stake.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:



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